

REMARKS

Applicants thank the Examiner for the courtesy of a telephone interview on March 2, 2005. During the interview, Applicants' representative James J. Barta, Jr. discussed the patentability of the claims including claim 1 in view of the cited reference U. S. Patent Application No. 2002/0174329 (Bowler et al.) with Examiner Fowlkes. The Examiner indicated that the proposed claim amendments appear to overcome the claim rejections based on the Bowler et al. reference. However, no agreement was reached as the Examiner stated that another search might be necessary. No exhibit was shown and no demonstration was conducted.

Applicants have thoroughly considered the Office action mailed on December 23, 2004. The specification has been amended by this Amendment A to correct minor typographical errors. Claims 1, 8, 11, 14-16, 27, 28 and 36-38 have been amended, claims 17-26 and 35 have been canceled, and claims 40-42 have been added by this Amendment A. Reconsideration of the application as amended is respectfully requested.

Restriction Requirement

In response to the restriction requirement, Applicants affirm the election of Invention I, claims 1-16 and 27-39. As such, Applicants cancel non-elected claims 17-26 in Invention II.

Provisional Double Patenting Rejection

In response to the provisional statutory type double patenting rejection, Applicants submit that the co-pending application serial no. 10/004,073 is to be abandoned. As such, Applicants respectfully request the withdrawal of the provisional statutory type double patenting rejection.

Overview

To illustrate the differences between the present invention as claimed and the cited prior art, Applicants point out that the claimed features of the present invention are directed to dynamically obtaining update content and applying the obtained update content to software prior to installation of the software. In the present invention, software stored on an installation media is to be installed on a destination machine. For example, a user may desire to install software stored on a CD-ROM to a computer. In this example, update content for the software is

dynamically obtained from one or more update media **prior to installation of the software**. The obtained update content is merged with the software **prior to installation of the software**. The merged software is then installed on the destination machine. In this manner, the user does not need to obtain updates for the software after the installation of the software because all updates have been obtained and merged before the software was installed.

The present invention fixes problems prior to the problems occurring by retrieving a minimal set of the most critical fixes to improve the software setup experience and to provide stable and secure software. The present invention ensures that software installed onto a machine automatically includes the most critical updates and fixes deemed necessary for a successful installation. In addition, the present invention enables the software developers to update the components on the distribution medium remotely, such as via the Internet.

The present invention improves responsiveness for installation problems, reduces support cost by reducing product support calls, increases customer satisfaction by improving the customer's out-of-box (first user) and upgrade experiences, minimizes the download time and size by including only the most critical updates, and improves upgrade compatibility. By including important updates at installation time, the present invention improves the stability of an operating system.

In contrast, the cited art discloses the transfer of configuration settings from a source computing system to a target computing system after software has been installed in the target computing system. While the cited art teaches "a method for automatically transitioning files from a source (i.e., old) computing system to a target (i.e., new) computing system using file transition rules" (Bowler et al, paragraph 14), it fails to disclose or suggest that the injection of the "new calculated settings" or new settings takes place prior to the target computing system's installation of software. In fact, the cited art teaches away from the present invention and, if extended to include updates, falls victim to the problems described above, such as installing unstable software before it has been updated to fix the instability. Thus, the prior art, as described in detail hereinafter, do not operate (and are not structured to operate) in a manner corresponding to the applicant's claimed invention.

Claim Rejections – 35 U.S.C. § 102

Claims 1-16 and 27-39 were rejected under 35 U.S.C. § 102 (e) as being anticipated by Bowler et al., U. S. Patent Application No. 2002/0174329 ("Bowler reference"). Applicants respectfully disagree. In response to Examiner's argument on pages 5-6 of the Office action, Applicants disagree with the Examiner's reading of the Bowler reference that it discloses "a method for automatically transitioning files (i.e., installing software) from a source computing system to a target computing system... (The) process may also be used for extracting configuration settings (i.e., obtaining update content) from multiple ... computing systems (i.e., update media) that are local or remote, and conglomerating them" (citing p. 9, col. R: 20-24 of the Bowler reference). Applicants argue that Examiner erroneously analogizes updating software prior to installation of the software of the present invention with transitioning files after software installation of the Bowler reference.

The Bowler reference discloses a system for automatically determining and selecting files for "transition from an old computing system to a new computing system." (See paragraph 13). According to the Bowler reference, "new computing systems typically include...updated versions of operating systems, new software applications, and other improved features." (See paragraph 4). As such, the selected files are to be transitioned to updated versions of operating systems and new software applications already installed on the new computing system. For example, the Bowler reference discloses an injection application which infuses a target computing system with configuration settings. The injection application "is invoked by the operating system on the target computing system." (See paragraph 87). Applicants submit that the Bowler reference clearly discloses the transfer of configuration settings to a target computing system having an operating system or software applications already installed thereon.

In contrast, amended claim 1 recites a method for "dynamically updating software **prior to installation of the software**" by "identifying update content related to the software **before installing the software**," "obtaining the identified update content," "merging the update content with the software," and "installing the updated software." The present invention eliminates the need to update software after installation of the software because the present invention dynamically obtains update content for the software prior to installation of the software on the destination machine. This is significantly different from the system of the Bowler reference.

The Bowler reference fails to teach or suggest updating software prior to installation of the software. In fact, the Bowler reference teaches away from the present invention by disclosing that the configuration settings are extracted and applied in a process separate from software installation. According to FIG. 3 of the Bowler reference, configurations settings are located and extracted from a source computing system. The extracted configuration settings are stored and manipulated before the source computer system prepares a transition package to be sent to a target computing system. Next, in FIG. 5, the target computing system receives the transition package and the configuration settings in the transition package are infused on the target computing system. For example, in paragraph 47, the Bowler reference describes that "[t]he operating system 34 on the target computing system 26 controls execution of the injection application 24 on the target computing system 26 (e.g., the Injection application 24 is an executable file (.EXE))." That is, the target computing system already has software installed to receive the transition package and the Injection application so as to recognize configuration settings that are to be infused on the target computing system.

Furthermore, the transitioned files according to the Bowler reference include configuration settings such as Internet settings, modem or other network settings... a desktop "look and feel," file system folders settings, application settings, folder names and locations" (Bowler reference, paragraph 4). Applicants submit that a desktop, a file system, applications or the like must be inherently available on the target computing system initially for these configuration settings to be applied. Hence, the configuration settings, "calculated settings" or even the "new settings" are infused on the target computing system after software, which may be an operating system, software applications, or the like, has already been installed on the target computing system.

As such, the Bowler reference cannot anticipate each and every element as set forth in amended independent claim 1. Claims 2-16 and 40-42 depend from claim 1. As such, the Bowler reference cannot anticipate each and every element as set forth in dependent claims 2-16 for at least the same reasons that the Bowler reference does not anticipate the amended independent claim 1.

Amended claim 27 recites a **publishing component** for identifying update content related to software **before installing the software**, an **updating component** for obtaining the update content, and an **installation component** for installing the updated software. Applicants submit

that the Bowler reference fails to teach or suggest at least these aspects of the present invention. Therefore, the Bowler reference cannot anticipate each and every element as set forth in amended independent claim 27. Claims 28-37 depend from claim 27. As such, the Bowler reference cannot anticipate each and every element as set forth in dependent claims 28-37 for at least the same reasons that the Bowler reference does not anticipate the amended independent claim 27.

Amended claim 38 recites "means for identifying update content relating to software...**adapted for installation**" and "means for merging the update content . . . with the software on the installation media to create updated software" wherein the updated software is "**created before the software is installed on the destination machine.**" Applicants submit that the Bowler reference fails to teach or suggest at least these aspects of the present invention. Therefore, the Bowler reference cannot anticipate each and every element as set forth in amended independent claim 38. Claim 39 depends from claim 38. As such, the Bowler reference cannot anticipate each and every element as set forth in dependent claim 39 for at least the same reasons that the Bowler reference does not anticipate the amended independent claim 38.

CONCLUSION

For at least the reasons noted above, Applicants respectfully submit that claims 1-16 and 27-42 are in condition for allowance and respectfully requests favorable reconsideration of this application. Although the prior art made of record and not relied upon may be considered pertinent to the disclosure, none of these references anticipates or makes obvious the recited invention. The fact that Applicants may not have specifically traversed any particular assertion by the Office should not be construed as indicating Applicants' agreement therewith.

The Applicants wish to expedite prosecution of this application. If the Examiner deems the claims as amended to not be in condition for allowance, the Examiner is invited and encouraged to telephone the undersigned to discuss making an Examiner's amendment to place the claims in condition for allowance.

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The Commissioner is hereby authorized to charge any deficiency or overpayment of any required fee during the entire pendency of this application to Deposit Account No. 19-1345.

Respectfully submitted,



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